

ORIGINAL

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JUL 27 2004

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.622(b),) MB Docket No. 04-185
Table of Allotments,) RM-10860
Digital Television Broadcast Stations.)
(Appleton, Wisconsin))

To: Office of Secretary
Attn: Chief, Video Division
Media Bureau

**REPLY COMMENTS OF ACE TV, INC.
IN SUPPORT OF NOTICE OF PROPOSED RULE MAKING**

Ace TV, Inc. ("Ace"), licensee of WACY(TV), Channel 32, Appleton, Wisconsin and permittee of digital television station WACY-DT, Channel 59, Appleton, Wisconsin, hereby files these Reply Comments in the above-captioned proceeding proposing the substitution of DTV Channel 27c for DTV Channel 59 at Appleton, Wisconsin.

Ace notes that two parties filed Comments in this proceeding, neither of whom opposes the grant of the instant rule making proposal. In fact, 3G COMM, L.L.C. points out additional benefits of grant. Specifically, in addition to those public interest benefits pointed out by Ace in its initial Petition, 3G COMM, L.L.C. indicates that grant of the proposal will facilitate the prompt clearing of the lower 700 MHz band (698-746 MHz) of incumbent broadcasters and the rapid deployment of advanced wireless services in the Appleton-Oshkosh-Neenah, Wisconsin Cellular Market Area and adjacent markets. Moreover, though the State of Wisconsin – Educational Communications Board ("WECB") opposes the proposal "to the extent it presupposes the allotment of DTV Channel 39 at Green Bay, Wisconsin," WECB Comments at

No. of Copies filed 074
List ABCDE

5, WECB does not object to Ace's use of DTV Channel 27 as proposed in the instant proceeding. See WECB Comments at 1, 2.

As the Commission noted in the *Notice of Proposed Rule Making* in this proceeding, no mutual exclusivity exists between the allotment of DTV Channel 39 to Green Bay as proposed by CBS Broadcasting, Inc. ("CBS") in a separate rule making proceeding (the "Green Bay proceeding") and the allotment of DTV Channel 27 to Appleton as proposed herein. Moreover, while the Commission stated that Ace and CBS entered into an "agreement" to resolve their conflicting proposals, that agreement consisted only of the filing of Joint Reply Comments in the Green Bay proceeding. Specifically, as the Commission is aware, Ace initially filed a Counterproposal to CBS's proposal in the Green Bay proceeding in which it sought the substitution of Channel 39 for WACY-DT's assigned Channel 59 at Appleton. Once Ace located and confirmed its ability to use Channel 27 for WACY-DT, however, the parties jointly filed Reply Comments in the Green Bay proceeding requesting the Channel 27 allotment at Appleton and the Channel 39 allotment at Green Bay. Because these two proposals were not mutually exclusive, however, the Commission considered Ace's request for Channel 27 at Appleton as a new petition for rule making and commenced the instant proceeding. Notably, CBS has not filed comments in this proceeding. Accordingly, there is no reason to delay a grant of the instant proposal based on the pendency of the Green Bay proceeding.

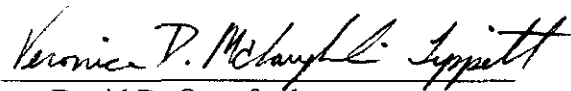
Moreover, Ace's filing of its initial Comments in this proceeding two days after the comment deadline is no bar to grant of the proposal. Ace has unquestionably demonstrated that it remains interested in the substitution at Appleton of DTV Channel 27c for DTV Channel 59. In addition, Ace has made clear that if the proposal set forth in this proceeding is adopted, Ace will expeditiously file an application for modification of its current DTV construction permit

consistent with the specifications set forth in the *NPRM* and, upon grant of the application, will take prompt steps to construct the DTV facilities proposed. Commission precedent is clear that where, as here, a late-filed expression of interest was accompanied by an appropriate motion for acceptance and the proceeding is uncontested, the submission of a late-filed expression of continuing interest is no bar to grant of the rule making proposal. *See, e.g., Wellington, Colorado*, 11 FCC Rcd 10549 (1996), *Sioux Falls, South Dakota*, 11 FCC Rcd 1069 (1996); *see also Bethel Springs, Tennessee*, 16 FCC Rcd 20329, ¶ 3.

For the foregoing reasons, Ace urges the Commission to adopt expeditiously the *NPRM*'s proposal to substitute DTV Channel 27c for DTV Channel 59 at Appleton.

Respectfully submitted,

ACE TV, INC.

By: 
David D. Oxenford
Veronica D. McLaughlin Tippet

Its Attorneys

SHAW PITTMAN
2300 N Street, NW
Washington, DC 20037-1128
(202) 663-8000

Dated: July 27, 2004

CERTIFICATE OF SERVICE

I, Renee Williams, do hereby certify that I have this 27th day of July, 2004, mailed by first-class United States mail, postage prepaid, copies of the foregoing **"REPLY COMMENTS OF ACE TV, INC. IN SUPPORT OF NOTICE OF PROPOSED RULE MAKING"** to the following:

Pam Blumenthal*
Video Division
Media Bureau
Federal Communications Commission
Portals II
445 Twelfth Street, S.W., Room 4-B550
Washington, D.C. 20554

John A. Prendergast, Esq.
D. Cary Mitchell, Esq.
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, NW, Suite 300
Washington, DC 20037

Margaret L. Miller, Esq.
Barry S. Persh, Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036-6802



Renee Williams

* via hand delivery